

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tiffany Dempsey	Team: Squad #12	CCRB Case #: 201405163	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 05/21/2014 12:35 AM	Location of Incident: [REDACTED]	Precinct: 44	18 Mo. SOL 11/21/2015	EO SOL 11/21/2015	
Date/Time CV Reported Wed, 05/21/2014 12:35 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 05/27/2014 5:34 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Francis Flynn	11320	950424	044 PCT
2. Officers			Unknown
3. POM Robert Benejan	06745	915299	044 PCT
4. An officer			Unknown

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM William Cullen	11928	950257	044 PCT
2. LT Jun Zhen	00000	936020	044 PCT
3. SGT William Esposito	01544	932608	034 PCT
4. POM Robert Mccadden	12997	945974	044 PCT
5. POM Claudio Velez	04509	934358	044 PCT
6. POF Sabrina Alicea	07951	948603	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Francis Flynn	Abuse: In the vicinity of § 87(2)(b) in the Bronx, PO Francis Flynn threatened § 87(2)(b) with the use of physical force.	[REDACTED]
B.POM Francis Flynn	Force: In the vicinity of § 87(2)(b) in the Bronx, PO Francis Flynn used force against § 87(2)(b)	[REDACTED]
C.POM Francis Flynn	Force: In the vicinity of § 87(2)(b) in the Bronx, PO Francis Flynn struck § 87(2)(b) with a baton.	[REDACTED]
D.POM Francis Flynn	Discourtesy: In the vicinity of § 87(2)(b) in the Bronx, PO Francis Flynn spoke discourteously to § 87(2)(b)	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
E.POM Francis Flynn	Force: In the vicinity of § 87(2)(b) in the Bronx, PO Francis Flynn struck § 87(2)(b) with a baton.	
F. Officers	Force: In the vicinity of § 87(2)(b) in the Bronx, officers used physical force against § 87(2)(b)	
G.POM Robert Benejan	Discourtesy: En route to the 44th Precinct stationhouse, PO Robert Benejan spoke discourteously to § 87(2)(b)	
H.POM Robert Benejan	Abuse: En route to the 44th Precinct stationhouse, PO Robert Benejan damaged § 87(2)(b)'s property.	
I. Officers	Force: At the 44th Precinct stationhouse, officers used physical force against § 87(2)(b)	
J. Officers	Discourtesy: At the 44th Precinct stationhouse, officers spoke discourteously to § 87(2)(b)	
K. An officer	Discourtesy: At the 44th Precinct stationhouse, an officer acted discourteously toward § 87(2)(b)	

### Case Summary

On May 21, 2014, at approximately 12:35 a.m., near the corner of Clay Avenue and East 168<sup>th</sup> Street in the Bronx, PO Francis Flynn and PO William Cullen of the 44<sup>th</sup> Precinct observed § 87(2)(b) and his friend, § 87(2)(b) § 87(2)(b) fighting in the street. Upon initially interacting with the officers, § 87(2)(b) fled the scene. While chasing § 87(2)(b) PO Flynn allegedly threatened to shoot § 87(2)(b) (**Allegation A**). PO Flynn allegedly grabbed § 87(2)(b)'s hair and pushed him to the ground (**Allegation B**). PO Flynn then struck § 87(2)(b) with a baton (**Allegation C**). § 87(2)(b)'s brother, § 87(2)(b) arrived at the location, and PO Flynn allegedly spoke discourteously to him and struck him with a baton (**Allegations D and E**). Additional officers from multiple commands responded, and an officer allegedly kned § 87(2)(b) in the neck then officers allegedly dragged him on the ground and pushed his chest into a police vehicle (**Allegations F**). While transporting § 87(2)(b) to the 44<sup>th</sup> Precinct stationhouse, PO Robert Benejan of the 44<sup>th</sup> Precinct allegedly spoke discourteously to § 87(2)(b) and threw his cell phone onto the ground, damaging its screen (**Allegations G and H**). Once at the stationhouse where § 87(2)(b) and § 87(2)(b)'s family members were present, an officer allegedly slapped § 87(2)(b) and lifted his arms all the way up behind his back while he was in handcuffs (**Allegation I**). An officer also allegedly pulled § 87(2)(b)'s hair, pushed him into a gate and spoke discourteously to him, and another officer allegedly stomped on § 87(2)(b)'s hat, spat into it, and placed it on his head while speaking discourteously to him (**Allegations J and K**). § 87(2)(b) and § 87(2)(b) were both arrested in regards to this incident (See Board Review 1).

This incident was originally filed with IAB by § 87(2)(b) a neighbor of § 87(2)(b) and § 87(2)(b) who witnessed the beginning of the incident (See Board Review 2). This case was reassigned from Investigator Cassandra Fendley to Investigator Tiffany Dempsey on January 6, 2015.

### Mediation, Civil and Criminal Histories

This case was ineligible for mediation. § 87(2)(b) did not file a Notice of Claim in regards to this incident; however, § 87(2)(b) filed a Notice of Claim on § 87(2)(b), and is claiming he was falsely arrested and imprisoned by members of the NYPD, and subjected to search and seizure, excessive force, assault, battery, and deliberate indifference to medical needs. He is seeking restitution of an undetermined amount for medical bills, damaged property, and pain and suffering sustained from the incident (See Board Review 3). § 87(2)(b) testified in a 50-H hearing on § 87(2)(b), § 87(2)(a) Gen. Mun. § 50- in regards to his claims (See Board Review 4). § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

### Civil and Officer Histories

- This is the first complaint filed by and/or involving § 87(2)(b) and § 87(2)(b) (See Board Review 6).
- PO Flynn has been a member of service for three years and there are no substantiated allegations against him.
- PO Benejan has been a member of service for 19 years and there are no substantiated allegations against him.

### Findings and Recommendations

#### Allegations Not Pleaded

§ 87(2)(b) entered the stationhouse with two other individuals, and yelled to § 87(2)(b) and officers as they attempted to lodge him. An officer pushed or pulled § 87(2)(b) out of the stationhouse after being

told she could not stay. When she continued to linger outside of the stationhouse, an officer threatened to arrest her if she did not leave and reiterated that she could not see § 87(2)(b). As § 87(2)(b) was interfering with the § 87(2)(b)'s arrest processing, the officer were merely stating a fact when explaining that § 87(2)(b) could be arrested; therefore these allegations are not pleaded.

### **Explanation of Subject Officers**

PO Flynn confirmed he was the only officer who chased § 87(2)(b) on foot, and admitted to striking § 87(2)(b) with his baton while attempting to stop him. Also, PO Flynn confirmed he interacted with and handcuffed § 87(2)(b). Therefore, **Allegations A, B, C, D, and E** are pleaded against PO Flynn. § 87(2)(b) alleged the male officer who transported him to the stationhouse with a female damaged his cell phone. PO Benejan's memo book, along with the Event Chronology, confirmed PO Benejan transported § 87(2)(b) to the stationhouse with PO Sabrina Alicea of the 44<sup>th</sup> Precinct. Also, § 87(2)(b)'s description of PO Benejan was consistent and very similar to PO Benejan's pedigree information. Therefore, **Allegation G and H** are pleaded against PO Benejan.

Regarding the physical force allegations at § 87(2)(b) due to the inconsistencies between § 87(2)(b)'s two phone statements, CCRB interview, and 50-H hearing testimony, the subject officers remain unidentified; therefore **Allegation F** is pleaded against "Officer(s)." § 87(2)(b) stated that either PO Flynn or PO Cullen, who transported him to the stationhouse, used physical force against him at the stationhouse. He was unable to see which officer did so because they were both standing behind him. Although PO Flynn confirmed seeing § 87(2)(b) within the stationhouse and PO Cullen confirmed processing his arrest paperwork near him while in the vicinity of the front desk, both PO Cullen and PO Flynn denied transporting § 87(2)(b) to the stationhouse or using physical force against him once inside. Therefore, **Allegation I** is pleaded against "Officers(s)." Regarding the physical force allegation and the discourteous language and action allegations at the 44<sup>th</sup> Precinct stationhouse, due to the numerous discrepancies between the testimonies of the officers, most of whom could not recall this incident, and the statements provided by § 87(2)(b) and § 87(2)(b) who were also grossly inconsistent amongst themselves, **Allegations J and K** are pleaded against "Officer(s)."

### **Recommendations**

**Allegation A: In the vicinity of § 87(2)(b) in the Bronx, PO Francis Flynn threatened § 87(2)(b) with the use of physical force.**

According to § 87(2)(b) while being chased by PO Flynn, PO Flynn stated, "Stop or Imma shoot," (See § 87(2)(b)'s statement).

§ 87(2)(b)'s neighbor who witnessed the incident, provided a phone statement, but was otherwise uncooperative. She did not allege an officer threatened to shoot § 87(2)(b) neither did § 87(2)(b) who reported the incident to IAB, but was unavailable to participate with the CCRB; however, it is unknown what, if anything, they were able to hear. (See § 87(2)(b)'s; See Board Review 1; See Board Review 7). § 87(2)(b) was also unavailable to participate in the incident (See Board Review 7). § 87(2)(b) was not present during the pursuit (See § 87(2)(b)'s statement).

Officers were consistent that PO Flynn did not threaten to use force against § 87(2)(b) (See PO Flynn's and PO Cullen's testimony).

§ 87(2)(b), § 87(2)(g)

**Allegation B: In the vicinity of § 87(2)(b) in the Bronx, PO Francis Flynn used force against § 87(2)(b)**

§ 87(2)(b) stated that once PO Flynn caught up to him, he grabbed § 87(2)(b) by his hair and pushed him on the ground by his shoulders, causing him to land on his back and sustain back pain (See § 87(2)(b)'s statement).

§ 87(2)(b) stated that as § 87(2)(b) was fleeing from the officers he tripped over the curb and fell to the ground. By the time officers approached him, he was still lying on the ground. She did not allege that an officer pulled § 87(2)(b)'s hair (See § 87(2)(b)'s statement).

PO Flynn stated that toward the end of his pursuit, he reached his hands out toward § 87(2)(b) to grab him; however, he was unable to reach him. § 87(2)(b) then elbowed backward, making contact with PO Flynn and causing PO Flynn to fall to the ground. § 87(2)(b) continued to run, but tripped while stepping onto the sidewalk. PO Flynn then got up and approached § 87(2)(b) who was already on the ground (See PO Flynn's testimony). PO Cullen corroborated that PO Flynn did not push § 87(2)(b) to the ground, and further stated that PO Flynn only grabbed § 87(2)(b) by the shirt during the pursuit (See PO Cullen's testimony).

§ 87(2)(g)

**Allegation C: In the vicinity of § 87(2)(b) in the Bronx, PO Francis Flynn struck § 87(2)(b) with a baton.**

It is undisputed that when officers initially approached § 87(2)(b) and § 87(2)(b) to conduct an investigation of a possible assault, § 87(2)(b) fled from the officers and disobeyed PO Flynn's commands to stop, and was subsequently struck with a baton. § 87(2)(b), § 87(2)(g)

According to § 87(2)(b) once on the ground, he curled up into a ball, moving his knees to his chest. PO Flynn then removed his baton and motioned it toward § 87(2)(b)'s head, leading § 87(2)(b) to move his forearm above his head to prevent being struck in the head. As a result, PO Flynn struck § 87(2)(b) in the right elbow and knee three times each, without giving him any commands, which caused § 87(2)(b) to sustain swelling to his knee and a laceration to his elbow which he provided a picture of during his CCRB interview (See Board Review 8). PO Flynn then turned § 87(2)(b) onto his stomach and placed his knee onto his back; however, before he was able to start handcuffing him, § 87(2)(b) arrived and interfered (See § 87(2)(b)'s statement).

According to § 87(2)(b) when he arrived he saw PO Flynn striking § 87(2)(b) with a baton. During his phone statement, § 87(2)(b) stated PO Flynn struck § 87(2)(b) in the back and shoulders and that he was bleeding; however, during his CCRB interview, § 87(2)(b) stated § 87(2)(b) who was lying face down, was struck twice on his elbow and twice on his lower back, near his hip (See § 87(2)(b)'s statements).

§ 87(2)(b), § 87(2)(a) Gen. Mun. § 50-h(3)

Additionally, § 87(2)(b) reported to IAB that officers hit "kids" with batons and flashlights (See Board Review 2).

PO Flynn testified that after § 87(2)(b) tripped and fell to the ground, PO Flynn told him to stop moving and that he was under arrest; however, § 87(2)(b) continued to move away from him. PO Flynn removed his baton and struck § 87(2)(b) on his thigh once; however, § 87(2)(b) tried to stand up and flee so PO Flynn struck him once more in the leg. § 87(2)(b) pulled away from PO Flynn, kicked his legs and pulled his wrists from PO Flynn who was holding his wrist and continuously issuing him commands. § 87(2)(b) then prevented PO Flynn from handcuffing § 87(2)(b) (See PO Flynn's testimony).

PO Cullen testified that PO Flynn struck § 87(2)(b) once in the leg while he was initially fleeing, which successfully slowed him down and allowed PO Flynn to grab a hold of § 87(2)(b)'s shirt while he continued to move away from him until § 87(2)(b) interfered, allowing § 87(2)(b) to flee from PO Flynn, though he was later stopped and handcuffed by PO Cullen (See PO Cullen's testimony).

§ 87(2)(b)'s medical records confirmed § 87(2)(b) had a bruise on his elbow, and that his knee initially had minor swelling which seized by the time he left the hospital (See Medical Records). The line of duty paperwork written by PO Flynn stated § 87(2)(b) was violently resisting, and his arrest report expressed that § 87(2)(b) was charged with resisting arrest (See Board Review 9 and 1).

Patrol Guide Procedure 203-11, officers may use minimum necessary force at the scene of a police incident in order to overcome resistance and place an individual under arrest (See Board Review 10).

§ 87(2)(b), § 87(2)(g)

**Allegation D: In the vicinity of § 87(2)(b) in the Bronx, PO Francis Flynn spoke discourteously to § 87(2)(b)**

**Allegation E: In the vicinity of § 87(2)(b) in the Bronx, PO Francis Flynn struck § 87(2)(b) with a baton.**

Although § 87(2)(b) and § 87(2)(b) alleged § 87(2)(b) was hit with a baton, § 87(2)(b)'s statements alone suggest otherwise (See § 87(2)(b)'s and § 87(2)(b)'s statements). § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(a) Gen. Mun. § 50-h(3)

Additionally, § 87(2)(b)'s arrest and DOC photographs were inconclusive for a head injury, and according to his medical records, § 87(2)(b) was not diagnosed with any head injury other than a headache (See Board Review 11; See Medical Records).

Similarly, § 87(2)(b) was consistent in his CCRB statements that PO Flynn stated, "Oh, that's your fucking brother;" § 87(2)(a) Gen. Mun. § 50-h(3)

(See § 87(2)(b)'s CCRB statements; See Board Review 4). Additionally, according to § 87(2)(b) PO Flynn did not state the discourteous statement (See § 87(2)(b)'s statement).

The officers were consistent that PO Flynn did not strike § 87(2)(b) with a baton or speak discourteously to him (See PO Flynn’s and PO Cullen’s testimony).

§ 87(2)(b), § 87(2)(g)

**Allegation F: In the vicinity of § 87(2)(b) in the Bronx, officers used physical force against § 87(2)(b)**

**Allegation I: At the 44th Precinct stationhouse, officers used physical force against § 87(2)(b)**

**Allegation J: At the 44th Precinct stationhouse, officers spoke discourteously to § 87(2)(b)**

**Allegation K: At the 44th Precinct stationhouse, an officer acted discourteously toward § 87(2)(b)**

As addressed above in the Explanation of Subject Officer(s) section, the investigation was unable to identify the subject officers; § 87(2)(g)

**Allegation G: En route to the 44<sup>th</sup> Precinct stationhouse, PO Robert Benejan spoke discourteously to § 87(2)(b)**

**Allegation H: En route to the 44<sup>th</sup> Precinct stationhouse, PO Robert Benejan damaged § 87(2)(b)’s property.**

According to § 87(2)(b)’s initial phone statement, while PO Benejan was transporting § 87(2)(b) to the stationhouse PO Benejan asked him if his “fucking” phone was playing music. He then removed the phone from § 87(2)(b)’s pocket, where it had been since before he interacted with PO Flynn and PO Cullen, and accidentally dropped it on the ground. When § 87(2)(b) saw his phone next, its screen was cracked (See § 87(2)(b)’s CCRB statements). § 87(2)(b) provided a picture of his cracked phone during his CCRB interview (See Board Review 12). Neither officer present during the transport recalled the incident (See PO Benejan’s and PO Alicea’s testimony).

§ 87(2)(b)’s property voucher states that PO Cullen vouchered § 87(2)(b)’s blue Samsung cell phone which had a cracked screen (See Board Review 13).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Team: \_\_\_\_\_

Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
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